

# SENATE BILL REPORT

## SB 5070

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As Reported By Senate Committee On:  
Human Services & Corrections, February 21, 2007  
Ways & Means, March 5, 2007

**Title:** An act relating to reentry of offenders into the community.

**Brief Description:** Changing provisions affecting offenders who are leaving confinement.

**Sponsors:** Senators Carrell, Regala, Hargrove, Kline, Weinstein, Stevens, Brandland, Parlette, McCaslin, Kastama, Holmquist, Zarelli, Pridemore, Schoesler, Clements, Rasmussen, Swecker, Roach, Franklin, Delvin, Sheldon, Eide, Spanel, Hewitt, Hatfield, Keiser, Pflug, McAuliffe, Berkey, Haugen, Fairley, Murray, Tom, Kohl-Welles, Shin and Kilmer.

**Brief History:**

**Committee Activity:** Human Services & Corrections: 1/11/07, 2/21/07 [DPS-WM, DNP, w/oRec].

Ways & Means: 2/28/07, 3/05/07 [DP2S].

**Brief Summary of Bill**

- Existing law is changed and new provisions are added that impact offenders returning to the community from confinement in the following areas: work release, supervision, educational programming, employment barriers, housing, and civil rights.

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** That Substitute Senate Bill No. 5070 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Carrell and McAuliffe.

**Minority Report:** Do not pass.

Signed by Senator Marr.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Brandland.

**Staff:** Shani Bauer (786-7468)

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### SENATE COMMITTEE ON WAYS & MEANS

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Majority Report:** That Second Substitute Senate Bill No. 5070 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Pridemore, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Carrell, Fairley, Hatfield, Hewitt, Hobbs, Honeyford, Keiser, Kohl-Welles, Oemig, Parlette, Rasmussen, Regala, Roach, Rockefeller, Schoesler and Tom.

**Staff:** Richard Ramsey (786-7412)

**Background:** According to the Department of Corrections (DOC), approximately 8,500 offenders return to the community from Washington prisons each year after completing their sentences and over 25,900 offenders are currently on active supervision in the community. Research from the Washington State Institute of Public Policy (WSIPP) shows that approximately 54 percent of these offenders will commit a new felony within 13 years. Further, the Washington Caseload Forecast Council estimates that under existing policies, Washington's incarceration rate will increase 23 percent by the year 2019.

In 2005, the Legislature directed the WSIPP to report, by October 2006, whether evidence-based and cost-beneficial policy options exist to alleviate the need to build more prisons. WSIPP concluded that several programs directed to adult offenders can have a positive impact on recidivism and produce significant cost savings for the state of Washington (see Steve Aos, Marna Miller, and Elizabeth Drake (2006). *Evidence-Based Public Policy Options to Reduce Future Prison Constructions, Criminal Justice Costs, and Crime Rates*. Olympia: Washington State Institute for Public Policy).

The 2006 Legislature created the Joint Task Force on Offenders Programs, Sentencing, and Supervision (SSB 6308). The legislation required the Task Force to review offender programs, sentencing, and supervision of offenders upon reentry into the community with the stated goals of increasing public safety, maximizing rehabilitation of offenders, and lowering recidivism. The Task Force made many recommendations, several of which are incorporated in this bill.

**Summary of Bill:** PART I - Community Transition Coordination Networks:

- Each county or group of counties are required to conduct an assessment of the services available in the county or region to assist offenders in reentering the community and present its assessment to DOC and a technical advisory committee no later than December 1, 2007. (Sec. 102)
- A community transition coordination network program is created within the Department of Community, Trade and Economic Development (CTED). (Sec. 103)

CTED must invite counties or groups of counties to apply for grant funds to facilitate partnerships between supervision and service providers on both the state and local levels. Among other components, it is anticipated that a county or group of counties wishing to implement a network would work with DOC, address methods to identify offenders' needs, and connect the offender with needed resources and services that support a graduated transition to full community release.

Counties receiving grant funds must work with WSIPP to conduct an annual evaluation of the network program. CTED must convene a technical advisory group to monitor implementation of the networks and review annual evaluations. The grant program expires July 1, 2012.

- Agencies, entities, or individuals acting in coordination with the supervising authority are not liable for civil damages resulting from any act or omission in the rendering of supervision activities. An individual reentry plan may not be used as evidence of liability against the state, counties, cities, or any of its employees. (Sec. 104)

#### PART II - Individual Reentry Plan:

- DOC is required to develop an individual reentry plan for every offender committed to a correctional facility. (Sec. 201)

An individual reentry plan is the result of a comprehensive assessment of an offender initiated at the time the offender enters the criminal justice system. The plan should address both the risks and needs of the offender and describe actions needed to prepare an individual for release, define terms and conditions of release, and address the supervision and services needed in the community.

#### PART III - Partial Confinement and Supervision:

- WSIPP is required to conduct an analysis of reentry and work release programs to identify evidence-based practices for the state of Washington. (Sec. 301)

The institute should identify optimal services or combination of services to be provided to offenders reentering the community through work release programs. DOC is, in turn, required to review its policies to transform its work release facilities into effective community reentry centers.

- An offender must participate in programming in order to qualify for 50 percent earned release. The maximum time an offender may spend in partial confinement is expanded. (Sec. 302)

In order to qualify for up to 50 percent earned release time, an offender is required to actively participate in programs or activities directed by his or her individual reentry plan. The maximum time an offender may spend in partial confinement, such as work release, is expanded to 12 months or one-half of the offender's sentence, whichever is less.

- If an offender commits more than one crime-related prohibition of his or her sentence or targeted risk condition as designated by DOC, the violation hearing is directed to superior court. (Sec. 303)

Upon a second violation of a crime-related prohibition or targeted risk condition, DOC may apply sanctions and submit a report to the superior court. If the court is not satisfied with the sanctions, the court may schedule a hearing. Upon a third violation of a crime-related prohibition or targeted risk condition, DOC must immediately transfer the offender to total confinement if the offender has not completed the maximum term of his or her confinement. If the offender has completed the maximum term of confinement, DOC must refer the matter to court for a violation hearing.

- DOC must convene a work group to review laws and policy regarding the supervision of offenders through the DOC. (Sec. 304)

#### PART IV - Education:

- To the extent possible, DOC must provide educational and vocational programs to provide offenders with basic academic skills or meet the recommendations identified in an offender's individual reentry plan. (Sec. 401)

An offender must pay all or a portion of the costs and tuition for participation in an associate of arts or baccalaureate degree program, any post-secondary academic degree program not directed by an offender's reentry plan, or any educational or vocational program if the offender has previously abandoned coursework without a satisfactory explanation.

- DOC and the State Board for Community and Technical Colleges must investigate and review methods to optimize educational and vocational programming opportunities for offenders. (Sec. 402)

DOC and the State Board must report to the Governor and the Legislature no later than November 15, 2007.

- WSIPP must conduct a comprehensive analysis and evaluation of evidence-based correctional education programs and the extent to which Washington's programs are in accord with these practices. (Sec. 403)

The Institute must report to the Governor and the Legislature no later than November 1, 2007.

#### PART V - Employment Barriers:

- An employer is presumed not to have been negligent in hiring an employee if the employer conducts a background investigation and the investigation did not reveal information that demonstrates the unsuitability of the employee for the position. (Sec. 501)

A background investigation must include a background check from the Washington State Patrol in addition to other diligent hiring practices including an interview and reference checks. If criminal history record information is returned, the employer may still hire the individual if the employer determines through a balancing test that the prospective employee is suitable for the work to be performed. The election by an employer not to conduct a background investigation under this section does not raise any presumption that the employer failed to use reasonable care.

- A business or organization utilizing a private data broker to conduct a background check on an applicant for employment or rental accommodations must notify the applicant in advance of the request and must provide a copy of the response to the applicant. (Sec. 502)
- DOC and the Department of Licensing must enter into an agreement for expedited procedures to assist offenders in obtaining drivers' licenses or identification cards upon release. (Sec. 503)
- A joint legislative task force is established to review and make recommendations regarding barriers that may prevent individuals with criminal histories from obtaining viable employment. (Sec. 504)

The Task Force must report to the Governor and the Legislature no later than November 15, 2007.

#### PART VI - Housing:

- A third party may seek eviction of a tenant if the tenant is conducting criminal activity on the premises and the landlord fails to take action to evict the tenant. (Sec. 601)
- Local housing authorities are encouraged to formulate rental policies that are not unduly burdensome to previously incarcerated individuals reentering the community, particularly when the individual's family already resides in government subsidized housing. (Sec. 602)
- DOC is appropriated funds and given authority to provide short-term housing assistance to offenders classified as high risk or high needs who are reentering the community and in need of transitional housing. (Sec. 603-604)

Housing assistance may not be provided in excess of 90 days. The state, DOC, and its employees are not liable for civil damages from the conduct of an offender solely due to the placement of an offender in short-term housing or the provision of housing assistance. This section expires July 1, 2009.

PART VII - Restoration of Civil Rights:

- The Legislature intends to restore a former felon's civil rights as early as practicable while optimally ensuring the payment of restitution to the victims of this state. (Sec. 701)

**EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Human Services & Corrections):** PART I - Community Transition Coordination Networks (CTCN): The CTCN program is a pilot project to be conducted in up to four counties for a period of four years and is limited to offenders under county or city misdemeanor probation and connecting all offenders, regardless of origin, with services and resources in the community. Counties must collaborate with the Department of Corrections (DOC) in efficiencies that may be gained in sharing space or resources. Local law and justice councils are amended to encourage collaboration between state and local government.

PART II - Liability:

A gross negligence standard of liability is applied to probation and supervision services provided by the state, local government or its employees. An error in judgment standard of liability is applied to the assessment and services associated with an individual reentry plan conducted by the state, local government, or its employees.

PART III - Individual Reentry Plan:

Adult basic education, evidence-based, promising practice, research-based, and vocational education are defined. An individual reentry plan must address a plan to maintain contact with the offender's children and family, the mental or physical disability of an offender and victim safety concerns. If a partial confinement option is identified, DOC must maximize the offender's time in partial confinement. The IRP must be conducted within the first six weeks of entry into the department of corrections.

PART IV - Partial Confinement and Supervision: DOC must continue to establish Community Justice Centers (CJC) throughout the state. In addition to the six existing facilities, three more facilities must be added by December 1, 2011. DOC must notify the county and/or city prior to locating a new CJC in the community. DOC must make efforts to enter into memoranda of understanding or agreements with the local community policing and

supervision programs to address efficiencies in sharing space or resources, mechanisms of communication, and partnerships between police and corrections officers in conducting supervision.

DOC must prepare a list of counties in which work release facilities and CJs are anticipated to be located within the next three years and transmit the list to OFM and the counties on the list.

If DOC denies transfer of an offender to community custody because he or she does not have an approved release plan, DOC may transfer the offender to partial confinement for up to three months of his or her earned early release time. If an offender has been found guilty of violating conditions of community custody multiple times and has been sanctioned a total of 120 days, upon the next violation, the department must transfer the offender to a minimum of sixty days confinement up to the remainder of the offender's sentence.

DOC must review current laws and policies regarding the supervision of offenders. The Sentencing Guidelines Commission must review state sentencing laws and policies in order to simplify supervision requirements.

PART V - Education: DOC is to fund basic academic skills through obtaining a high school diploma or its equivalent; achievement of vocational skills necessary for purposes of work programs and for an inmate to qualify for work upon release; and additional work and education programs necessary for compliance with an offender's individual reentry plan (except post-secondary education). DOC must give priority to offenders under the age of twenty-two in obtaining a high school diploma or GED.

Other appropriate vocational, work or education programming that does not meet the above requirements must be paid by the inmate according to a sliding scale formula.

A third party may pay all or a portion of the costs and tuition for any programming. Payments for this purpose must not be subject to any of the deductions as provided in 72.09.

A postsecondary education degree program is created. An inmate must pay for the program by paying for the program themselves, receiving funding from a third party, or by obtaining a loan from the department. DOC must establish a process for awarding loans to the extent that funds are appropriated or donated for that purpose. The inmate must repay the loan beginning two years after release. The loan does not accrue interest. Money collected is reinvested in the loan program.

PART VI - Employment Barriers: A business and occupation tax credit or utility tax credit is allowed for employers who hire previously incarcerated individuals and meet certain criteria. The credit is \$1,000 per qualifying employee who worked at least 780 hours in the first year of employment.

The Department of Licensing is required to convene a work group to review and recommend changes to occupational licensing laws and policies to encourage the employment of individuals with criminal convictions while ensuring the safety of the public.

Provisions creating a presumption against negligent hiring are removed as well as provisions creating a task force to address occupational licensing issues and other employment related barriers.

PART VII - Housing: A landlord who rents to an offender is not liable for civil damages arising from the criminal conduct of the tenant if the landlord discloses to residents that he or she has a policy of renting to offenders.

The Offender Reentry Transitional Housing Assistance Program is created in CTED. DOC is required to cooperate with CTED in determining an appropriate formula for the distribution of funds and developing rules, requirements and procedures for operation of the program. DOC is required to cooperate with organizations receiving grant funds to identify appropriate housing solutions, facilitate an offender's application for housing and assist the offender in accessing appropriate services.

The provision relating to a third party's right to seek eviction of a tenant for criminal activity under the Landlord Tenant Act is removed as well as the provision requiring DOC to provide short term housing funding.

PART VIII - Appropriations: Funds are appropriated consistent with the Governor's budget for expanding drug treatment programs, general education programs, life skills training, family centered programming, vocational education programs, correctional industries, violence reduction programs and employment and job training. Funds are also appropriated to establish a reception diagnostic center and Community Justice Centers.

PART IX - Restoration of Civil Rights: A convicted felon's right to vote is provisionally restored once he or she is no longer under the authority of DOC (no longer confined and no longer under supervision). The sentencing court may revoke the provisional restoration of voting rights if the person willfully fails to comply with the terms of his or her legal financial obligations.

PART X - Oversight Committee: A Legislative Corrections Oversight Committee is created to monitor activities of DOC and ensure compliance with relevant statutes, laws, and policies. Among other duties, the committee may request and receive reports regarding implementation of the recommendations of the joint task force on offenders programs, sentencing and supervision as well as the provisions of this act, and monitor coordination and collaboration between local government and the department.

**EFFECT OF CHANGES MADE BY RECOMMENDED SECOND SUBSTITUTE AS PASSED COMMITTEE (Ways & Means):** The provision imposing mandatory sanctions on offenders who violate the terms of their community supervision is removed. Technical corrections to the provisions authorizing the business and occupation tax credit for business that hire qualifying ex-offenders are made. The appropriations are removed. The bill is contingent on funding in the budget bill, and the provision requiring a business or organization to notify an applicant that the business or organization has made a background check on the applicant is removed.

**Appropriation:** \$32.8 million State General Fund.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** Yes.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony (Human Services & Corrections):** CON: Landlords do not support the provisions of section 601 to allow third parties to utilize provisions of Landlord Tenant Act to evict tenants.

OTHER: Education: Good quality education and job training are important to the successful reintegration of offenders. Supporters wanted to ensure that funding would also be made available to expand programming.

Some felt the bill does not go far enough, such as restoring the Associate of Arts degree program. More educational opportunities should be available for offenders in the community after release. Faculty also needs to be more involved in the educational programs and studies mandated by this bill.

Civil Liability: Civil liability is important to victims and to ensure the safety of the public. The language of section 104 is too broad in providing entities immunity from liability for supervision activities.

As local governments are being required to work ever closer with DOC for supervision, the same gross negligence standard should apply to local governments for misdemeanor liability that applies to DOC. The Attorney General's Office was concerned that some provisions of this bill seem to increase the liability of DOC and make it difficult for them to manage risk and liability.

Transition Networks: It is important to define the partnerships between Community Corrections Officers (CCOs) and law enforcement as well as the roles and responsibilities of team members. More administrative oversight should be built into the process.

The community transition coordination network should remain voluntary and be a pilot program. "Assessment" is not the appropriate term in section 102 as the counties are not making qualitative assessments. "Inventory" is more appropriate. Local government also wants to make sure that this is a funded mandate. Generally, while programs may decrease costs for the state and the need for prisons, this does not necessarily translate to reduced costs for local government.

Sentencing and Supervision: Truth in sentencing should be restored. This bill does nothing to address problems of offenders getting half off of their prison sentence from the start and class C & D offenders receiving no effective supervision. Concerns were also expressed regarding the process for multiple violations. While the intent may be to address the need for more severe sanctions for multiple violators, this provision may have the opposite effect because the court process is slow.

Supervision provisions address the concerns of CCOs. Pre-sentencing should be restored. Assessment should start before the offender is brought in front of the judge. Victims' safety concerns need to be included in many areas of the bill.

Housing: Support was expressed for continued funding through DOC for housing, but provisions should mandate how DOC will provide assistance.

Work Release: Support was expressed for the work release study to be completed by WSIPP and making sure that work release is available throughout the state. Some concerns were noted with increasing the allowable time for partial confinement, particularly before completion of the study and addition of other programming within that context.

Voting: Restricting an offender's right to vote based on payment of Legal Financial Obligations does not serve to enhance collection and conversely serves to hinder reentry process. Restoration of voting rights is an important issue and should be addressed.

**Persons Testifying (Human Services & Corrections):** CON: John Woodring, Washington Apartment Association, Rental Housing Association.

OTHER: Harold Clarke, DOC; Ari Kohn, Post-Prison Education Program; Dave Johnson, WCCVA; Russ Hauge & Tom McBride, WAPA; Debbie Wilke, WA State Sheriff's Association; Tim Boutz, Correctional Education Association; Kathy Goebel, SBCTC; Don Pierce, WASPC; Chief Larry Saunders, WASPC/City of Lakewood; Jennifer Shaw, ACLU; Rashi Gupta, Pierce County; Seth Dawson, WA State Coalition for the Homeless; Tammy Fellin, Association of Cities; Sophia Byrd McSherry, Association of Counties; Glen Anderson, OAG; Larry Shannon, WSTLA; Ginger Richardson, WFSE; Amber Lewis, WFSE; Bob Markholt, Seattle Vocational Institute; Jim Tharpe, Unity House.

**Staff Summary of Public Testimony (Ways & Means):** PRO: The bill does address the concerns raised by recent news reports about community supervision. It provides partnerships for local law enforcement agencies with the Department of Corrections in implementing recidivism reduction. It will lead to safer communities at reduced cost. This is a courageous bill because of the investments in offender education. Inmates with two years of college reoffend only 10 percent of the time. Of 250 offenders taking post secondary coursework at the Washington State Penitentiary, there were 313 degrees earned and a recidivism rate of 12 percent.

CON: The bill relies upon work release programs that are not proven to reduce recidivism. There is a higher rate of recidivism associated with work release than those released directly from prison. The Legislature should slow down investments that are not evidence-based. If you want local government to participate, then address their issues. Section 603 imposes liability on businesses and restricts the free flow of information to protect the community.

OTHER: We have a concern that if appropriations are removed from the bill the funding will get lost in the budget. Section 405 on sanctions for violations of supervision will result in 60 days in local jails. We'd rather have the sanctions language removed altogether. Funding for the county inventory associated with the community transition coordination networks is very important.

**Persons Testifying (Ways & Means):** PRO: Senator Carrell, prime sponsor; Larry Saunders, Washington Association of Sheriffs and Police Chiefs; Ari Kohn, Post-Prison Education Program.

CON: Bertha Fitzer, Pierce County Prosecutor's Office.

OTHER: Sophia Byrd McSherry, Washington State Association of Counties.